

In the Matter of WALTER JANSEN & SON *and* WAREHOUSEMEN'S UNION,
LOCAL 1-17, I. L. W. U.-CIO

Cases Nos. 20-R-1309 and 20-R-1310.—Decided August 3, 1945

Mr. Robert W. Norton, of San Francisco, Calif., for the Company.

Mr. Walter K. Eckland, of Sacramento, Calif., for the CIO.

Mr. Albert Brundage, of San Francisco, Calif., *Mr. Gerald A. Shearin*, of Marysville, Calif., and *Mr. Louis D. Pogetto*, of Sacramento, Calif., for the AFL.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon separate petitions duly filed by Warehousemen's Union, Local 1-17, I. L. W. U.-CIO, herein called the CIO, alleging that questions affecting commerce had arisen concerning the representation of employees of Walter Jansen & Sons, Lincoln, California, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before Robert E. Tillman, Trial Examiner. Said hearing was held at Lincoln, California, on May 16, 1945. The Company, the CIO, and General Teamsters & Warehousemen, Locals 137 and 150, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, herein collectively called the AFL, appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Walter Jansen & Son is a partnership engaged in the business of warehousing, feed manufacturing, and processing of grains, beans,
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and peas at plants in Lincoln, Gridley, and Wheatland, California; it also engages in the purchasing of beans and peas as agent for certain principals. The Company stores grains, rice, beans, and peas, all of which is grown locally. The principal part of the Company's business is concerned with processing. Of the grains processed more than 10 percent in value is obtained from outside the State of California, the remainder being derived from local areas within the State. In 1944 the Company's total sales aggregated approximately \$1,000,000. The processed grains and feed are sold to customers in the areas surrounding the Company's plants. In its capacity as agent for other principals, the Company acts for a private broker in purchasing, warehousing, and shipping beans ultimately destined for the United States Government and in a similar capacity for an agency of the United States Government in the purchase of peas. During the 2 years preceding the hearing the Company handled about \$100,000 worth of beans for its principal. The beans and peas are shipped on Government orders to points outside the State.

We find, contrary to the contentions of the Company, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Warehousemen's Union, Local 1-17, I. L. W. U., affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

General Teamsters & Warehousemen, Locals 137 and 150, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

The Company has refused to recognize the CIO as the collective bargaining representative of any of its employees on the ground that no proof of majority representation in either of the units hereinafter found to be appropriate has been submitted by the CIO to the Company.

The AFL asserts that the October 15, 1937, contract between its Local 137¹ and a group of employers,² including the Company, has

¹ In 1941, Local 137's jurisdictional lines were altered with the result that jurisdiction over the Lincoln warehouse was assigned to Local 150, Local 137 retaining jurisdiction over the Gridley warehouse. No modification of the agreement occurred as the result of this change in the jurisdictional lines of the contracting union.

² The employers appear to have acted individually and not as an association. In any event none of the parties questions the appropriateness of the single plant units sought by the CIO.

been automatically renewed from year to year according to its terms and is now a bar to this proceeding since the CIO's representation claim to the Company was made subsequent to the most recent automatic renewal notice date, September 15, 1944. The Company and the CIO deny that the agreement, insofar as it affects the Company, is still operative and maintain, in effect, that, although no formal notice of termination was served by any of the parties, the contract was permitted to lapse. We find it unnecessary to decide as between the contention of the AFL on the one hand and that of the Company and the CIO on the other, since, even accepting the AFL's position, the contract may be terminated in approximately 2½ months upon appropriate notice by either of the parties thereto. In these circumstances, we find that the 1937 agreement is not a bar to a determination of representatives within the next 30 days pursuant to our usual Direction of Election. However, any certification of representatives which we may issue as a result of the election shall be for the purpose of designating a bargaining representative to negotiate a new contract to become effective on or after October 15, 1945.³

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in each of the units hereinafter found appropriate.⁴

We find that questions affecting commerce have arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNITS

All parties are agreed that separate units of warehouse employees at the Gridley and Lincoln plants, respectively, are appropriate.⁵ They disagree, however, with respect to the inclusion or exclusion of the truck driver at the Lincoln warehouse and foremen in both warehouses.

The CIO would exclude, and the Company and AFL include, the truck driver at the Lincoln warehouse who spends 80 percent of his working time making over-the-road deliveries to and from the warehouse and the balance of his time working in the warehouse. We shall include him in the unit.⁶

³ *Matter of Joseph Dyson & Sons, Inc*, 60 N. L. R. B. 867, and cases cited therein.

⁴ The Field Examiner reported that the CIO submitted 14 application cards; that the names on 12 of these cards were listed on the Company's combined pay roll for the Lincoln and Gridley plants containing the names of 23 employees in the 2 appropriate units; that the names on 4 of the 12 cards are of employees working in the Lincoln plant, and the remaining 8 are of employees working in the Gridley plant; and that the 12 cards were dated as follows: 4 in December 1944, 7 in February 1945, and 1 was undated. The AFL relies on its contract to establish its interest.

⁵ Neither union is presently seeking to represent the employees at the Wheatland plant.

⁶ *Matter of Armstrong Cork Company*, 61 N. L. R. B. 1320; *Matter of O. K. Storage & Transfer Company, Inc*, 56 N. L. R. B. 1521.

The CIO and the AFL desire to include the two foremen in the Gridley warehouse and the one foreman in the Lincoln warehouse in the respective units; the Company urges their exclusion. Each of the foremen, who have comparable duties, directs the activities of three or more subordinates with respect to whom, it appears, the foremen exercise supervisory duties within the Board's customary definition. Accordingly, we shall exclude the foremen as supervisory employees.

We find that the following separate units excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, are appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

(1) All employees at the Company's warehouse in Lincoln, California, including truck drivers, but excluding office employees and foremen;

(2) All employees at the Company's warehouse in Gridley, California, including truck drivers, but excluding office employees and foremen.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction.⁷

DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Walter Jansen & Son, Lincoln, California, separate elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twentieth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the units found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding

⁷ The AFL's request as to the form in which it desires its name to appear on the ballots is hereby referred to the Regional Director for determination.

the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election to determine whether they desire to be represented for the purposes of collective bargaining in unit (1) by Warehousemen's Union, Local 1-17, I. L. W. U.-CIO, or by General Teamsters & Warehousemen, Local 150, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or by neither, and in unit (2) by Warehousemen's Union, Local 1-17, I. L. W. U.-CIO, or by General Teamsters & Warehousemen, Local 137, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or by neither.